

# Dennis M. Hayes

attorney at law

120 N. Fourth Ave., Ann Arbor, Michigan 48104 (734) 995-4646 fax (734) 995-2910 email: [dennismh@earthlink.net](mailto:dennismh@earthlink.net)

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May18, 2015

Rep. Klint Kosto  
Chairman  
House Judiciary Committee  
Room 521  
House Office Building  
Lansing, MI

Re Forfeiture Bills Hearing

Dear Representative Kosto,

Thank you for introducing the forfeiture reform bills currently being considered by the Judiciary Committee. These are important modifications to the current forfeiture law and long overdue. I've represented many claimants in forfeiture proceedings over the past 20 years and believe the proposed bills are important, but initial steps, in changing the current forfeiture laws.

Attached please find the Institute for Justice report "Policing for Profit" which I'd like included in the record of the Committee's records for the forfeiture bills hearing.

The report is a comprehensive study of civil asset forfeiture in the United States and should be studied by the Judiciary Committee as it considers the bills pending before your Committee.

I'll be speaking in favor of the forfeiture bills being considered by you. Again thank you for your attention to these matters.

Sincerely,



Dennis M Hayes

Enc: 30



## Asset Forfeiture Report: Part I

## POLICING —for— PROFIT

### Part I: Policing for Profit

By Williams, Holcomb and Kovandzic

#### What is Civil Asset Forfeiture?

In everyday language, if something is "forfeited," it means that an owner voluntarily relinquishes the property. In legal forfeiture actions, however, "forfeited" property has been taken by the government without compensation, not voluntarily given up.[17]

Federal and most state laws allow both civil and criminal asset forfeitures. In civil asset forfeiture, action is taken against a person's property or assets, not against an individual. A person's property is the target of the legal proceeding, and the owner is secondary. The owner does not have to be arrested or convicted of a crime to have his property taken. By contrast, criminal forfeitures occur against a person after conviction for an underlying criminal offense.

Critics charge that law enforcement officers prefer civil forfeiture because it affords property owners fewer protections than criminal proceedings, thus making it easier to seize assets, and indeed, one prominent prosecutor has admitted that criminal forfeiture is "a much more limited tool of law enforcement than is civil forfeiture." [18]

In the forfeiture context, a "seizure" is when an officer of the law takes possession of an individual's property. This is typically the first step in the asset forfeiture process. For the police to seize an individual's property, most jurisdictions require that the officer merely have "probable cause" to believe the property is subject to forfeiture. The laws in some jurisdictions, however, have additional requirements before real property, such as a home, can be seized.

What happens after a seizure depends on the jurisdiction, the type of property seized and the type of forfeiture that is being sought. In some cases, the police may simply declare a property forfeited—permanently taken from its owner—without judicial involvement. Prosecutors or district attorneys may also initiate forfeiture proceedings in court. A judge will then determine if the assets are to be forfeited; if forfeited, ownership of the assets is transferred to the government.

As this report details, state and federal law then dictates what can be done with the property or, if sold, its proceeds. Federal law and laws in most states allow 50 percent or more of the property or proceeds to go to law enforcement agencies. This includes cash, cars, cell phones and homes that can be kept for official use. Some states dictate that forfeiture proceeds or a percentage of them fund drug education and rehabilitation programs or the general fund of the city, county or state.[19]

#### Incentives for Abuse of Civil Asset Forfeiture

Supporters of civil asset forfeiture, including law enforcement officers and prosecutors, argue that it is an essential tool for fighting crime, both by reducing the profitability of crimes and by removing the assets required for certain criminal activity. [20] Forfeiture is especially important, proponents claim, for reducing the rewards of financially motivated crimes such as drug trafficking and sales, gambling and vice, and organized crime.[21]

Proponents also argue that asset forfeiture protects the public's interest and promotes the social good by compensating individual victims, funding victim compensation funds, and, where allowed by law, funding schools, drug treatment and drug education programs.[22] Finally, proponents argue that civil asset forfeiture makes additional funds available for important law enforcement activities.[23]

However, critics charge that the lure of potential financial rewards affects law enforcement activities and priorities. The combination of tremendous financial incentives and limited protections for property owners creates a situation ripe for abuse.

#### Profit Motive

Law enforcement agencies face tremendous financial incentives to "police for profit." [24] Table 1 [25] shows the percentage of forfeiture proceeds that may be used for law enforcement purposes in all 50 states.[26] Only eight states bar the use of state forfeiture proceeds by law enforcement. In the other 42 states, at least 50 percent goes to law enforcement, and in 26 states, it is 100 percent.[27] This provides opportunities for self-generating substantial agency resources.

Criminologists, economists and legal scholars who have studied forfeiture behavior have found evidence indicating that police departments are taking advantage of lenient forfeiture statutes to "pad their budgets." [28] Financial incentives may be particularly powerful for state and local law enforcement agencies that have limited resources and are susceptible to changes in budget allocations.[29] According to a 2008 investigative series on National Public Radio, some Texas sheriffs' departments rely on forfeited money for up to one-third of their budgets.[30]

Table 1 Percent Distribution of Law Enforcement

0%	Indiana, Maine, Maryland, Minnesota, North Carolina, North Dakota, Ohio, Vermont
50%	Colorado, Wisconsin
60%	Connecticut, New York
63%	Oregon
65%	California

Given the considerable sums of money that some departments receive and the limited expenditure oversight in many jurisdictions, it is not surprising that investigations have revealed some highly questionable expenditures of forfeiture proceeds:

in Camden County, Ga., a \$90,000 Dodge Viper for the county's DARE program;



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95%	South Carolina
100%	Alaska, Alabama, Arkansas, Arizona, Delaware, Georgia, Hawaii, Idaho, Iowa, Kansas, Kentucky, Massachusetts, Michigan, Montana, Nevada, New Jersey, New Mexico, Oklahoma, Pennsylvania, South Dakota, Tennessee, Utah, Virginia, Washington, West Virginia, Wyoming

In Colorado, bomber jackets for the Colorado State Patrol;

In Austin, Texas, running gear for the police department;

In Fulton County, Ga., football tickets for the district attorney's office,

In Webb County, Texas, \$20,000 for TV commercials for the district attorney's re-election campaign;

In Kimble County, Texas, \$14,000 for a "training seminar" in Hawaii for the staff of the district

attorney's office;

- In Albany, N.Y., over \$16,000 for food, gifts and entertainment for the police department.[31]

A sheriff in Georgia has even been the subject of a grand jury investigation for alleged misuse of forfeited assets (see also "Extravagance with Forfeiture Funds in Camden County, Ga." on p. 19). In this particular county,

\$3,000,000 was used to build a sheriff's substation;

vehicles were purchased not only for the department but also for other county departments and neighboring law enforcement agencies;

\$250,000 was donated to the sheriff's alma mater for a scholarship.[32]

FBI agent and researcher Gregory Vecchi and criminal justice professor Robert Sigler note, "[W]hat is evident from their behavior is that federal, state, and local governments use assets forfeiture to generate revenue, despite their claims otherwise." [33] For example, the U.S. Attorney General stated in 1990, "We must significantly increase forfeiture production to reach our budget target. Failure to achieve the \$470 million projection would expose the Department's forfeiture program to criticism and undermine confidence in our budget predictions. Every effort must be made to increase forfeiture income in the three remaining months of fiscal year 1990." [34]

More recently, AssetRecoveryWatch.com, a forfeiture training and advocacy organization, cited a senior U.S. Justice Department official who, speaking at a conference in July 2009, "urged prosecutors and law enforcement officials to seize and forfeit more ill-gotten gains." [35] AssetRecoveryWatch.com (marketing slogan: "Is that house (or car, or boat) worth seizing? Our experts *help* you decide") is part of a cottage industry of for-profit and non-profit organizations that has developed to assist government officials in seizing and forfeiting assets.[36]

Criminologist John Worrall surveyed 770 police managers and executives and found that almost 40 percent of respondents agreed or strongly agreed with the statement that civil forfeiture is "*necessary* as a budget supplement" (emphasis added).[37]

And criminal justice professor Mitchell Miller and Lance Selva found that police supervisors were keenly aware of the financial benefit of engaging in forfeiture activities and frequently made operational decisions to maximize perceived financial rewards.[38] They report observing "many such cases in which the operational goal was profit rather than the incarceration of drug offenders. The pursuit of profit clearly influenced policies on case selection." [39]

An example of how law enforcement maintains its "addiction" to forfeiture funds is the practice of "reverse stings," in which police pose as drug sellers rather than buyers.[40] Forfeiture advocates' claims of "preventing crime and putting major offenders away" are inconsistent with practices such as reverse stings because they target relatively low-level, non-trafficking drug offenders who are subject to less severe criminal penalties than those arrested for drug sales and do not affect drug supply. Instead, law enforcement targets buyers rather than sellers because buyers tend to have more cash on hand subject to forfeiture.[41]

Indeed, evidence indicates that a significant percentage of state and local forfeiture actions are initiated against suspected low- to moderate-level offenders, especially low-level drug offenders, rather than the high-level targets that forfeiture advocates claim to be aiming for.[42]

Prosecutors also benefit from asset forfeiture. Assistant U.S. Attorney Craig Gaumer calls asset forfeiture "a prosecutor's secret weapon." [43] The National District Attorneys Association has promulgated several policy statements and guidelines regarding asset forfeiture, recommending its use.[44] Perhaps not surprisingly, there is evidence that prosecutorial discretion has been inappropriately influenced by the presence of asset forfeiture options.[45]

Current and former justice officials have acknowledged the powerful incentives of financial rewards from forfeiture.[46] In the NPR series, the police chief of a small town in Texas made it clear that the retention of forfeited assets is a very attractive consideration:

Law enforcement has become a business, and where best to hit these narcotics organizations other than in the pocketbook ... and then to be able to turn around and use those same assets to benefit our department, that's a win-win situation as far as we're concerned.[47]

Perhaps the clearest evidence of the importance that law enforcement places on generating revenues through forfeiture is the political pressure the law enforcement lobby has exerted to prevent reforms to asset forfeiture laws at the state and federal level.[48] As law professors Eric Blumenson and Eva Nilsen and others have documented, lobbying by law enforcement has resulted in considerable revisions and modifications beneficial to law enforcement to forfeiture reform efforts.[49]

One egregious example is law enforcement's lobbying efforts against amendments to federal asset forfeiture laws that would have required that state proceeds from equitable sharing with the federal government be subject to state law—meaning that if state law demands that 50 percent of proceeds go to drug treatment or the general fund, the same would apply to equitable sharing payments.[50] The amendments were repealed before they became effective.[51]


### **An Uneven Playing Field for Property Owners**

The profit motive in civil asset forfeiture laws provides a critical incentive for abuse. By contrast, property owners' ability to reclaim seized property is a check on forfeiture power. The better legal procedures protect this ability, the more difficult it is for law enforcement to forfeit property. This report examines two key factors that determine how easily property owners can defend their interests in civil asset forfeiture proceedings: the standard of proof required to demonstrate that the property should be forfeited and the strength of an "innocent owner" defense.[52]

#### **Standard of Proof**

The “standard of proof” means how much evidence the government must present at trial and how compelling that evidence must be in order to successfully claim property through civil asset forfeiture. The higher the standard of proof set by state law, the harder forfeiture is for the government and the more protection afforded property owners.

Table 2: Standard of Proof in State Forfeiture Cases\*



Prima Facie / Probable Cause	Alabama, Alaska, Delaware, Illinois, Massachusetts, Missouri, Montana, Rhode Island, South Carolina, Wyoming
Probable Cause and Preponderance of the Evidence	Georgia, North Dakota, South Dakota, Washington
Preponderance of the Evidence	Arizona, Arkansas, Hawaii, Idaho, Indiana, Iowa, Kansas, Louisiana, Maine, Maryland, Michigan, Mississippi, New Hampshire, New Jersey, Ohio, Oregon, Pennsylvania, Tennessee, Texas, Virginia, West Virginia
Preponderance of the Evidence and Clear and Convincing	Kentucky, New York, Oregon
Clear and Convincing	Delaware, Kansas, New York, Wisconsin
Clear and Convincing and Beyond a Reasonable Doubt	California
Beyond a Reasonable Doubt	Nebraska, North Carolina, Wisconsin

\* When necessary, in cases with multiple standards, the higher one is for the forfeiture of real property. \*\* States have effectively done away with civil forfeiture.

The highest standard is “beyond a reasonable doubt,” commonly associated with convictions on criminal charges. As shown in Table 2, only four states require such a high standard for civil forfeiture proceedings, and one of those, California, only uses it when certain property is at issue. (Most commonly, in states with two forfeiture standards, the higher one is for the forfeiture of real property such as land and homesteads.) In another of those states, North Carolina, all forfeitures are criminal actions; civil asset forfeiture essentially does not exist in North Carolina. Only Nebraska and Wisconsin require beyond a reasonable doubt for all civil forfeiture.

“Probable cause” is the lowest standard used for forfeiture, and it is the standard for some property in 14 states. Probable cause is the same standard used to justify search warrants and the arrest of suspected law violators and means merely that the government has a reasonable

belief that a person has committed a crime. It is also the standard law enforcement must meet in most states for a seizure of property—the first step in the forfeiture process.

As Table 2 shows, 27 states employ a “preponderance of the evidence” standard for forfeiture of some property, and so does the federal government, making it the most common standard. It is considered higher than mere probable cause and generally equates to the idea that it is more likely than not that the property is related to criminal conduct and thus subject to forfeiture. Finally, 13 states use a “clear and convincing” standard for some property. It poses a greater challenge for government to prove its case than probable cause or preponderance, but less than reasonable doubt.

In short, in the vast majority of states and at the federal level, the standard of proof required to forfeit an individual’s property is lower than the standard required to prove that the individual was guilty of the criminal activity that supposedly justified the forfeiture in the first place. Given this situation, it is not surprising that upwards of 80 percent of forfeitures occur absent a prosecution.[53]

#### Burden on Innocent Owners

Not only are most civil forfeitures subject to a standard of proof lower than that required for criminal guilt, but in most states, property owners are effectively guilty until proven innocent.

In 1996, the U.S. Supreme Court held in *Bennis v. Michigan*[54] that property owners do not have a constitutional right to an “innocent owner” defense in civil forfeiture actions. In *Bennis*, a wife’s car was used without her knowledge by her husband to secure the services of a prostitute. The husband was arrested and the car seized. Under Michigan law, vehicles used for such purposes were subject to seizure and forfeiture. Furthermore, Michigan law did not provide for a defense based on an owner’s lack of knowledge about the use of the vehicle for illegal purposes—in other words, that the owner is innocent, and therefore the property should not be forfeited. The wife appealed the forfeiture of the vehicle, and the U.S. Supreme Court ruled against her.

The critical public and political reaction to this ruling, as well as media reports of questionable forfeiture activities, led to the inclusion of an innocent owner defense in the 2000 Civil Asset Forfeiture Reform Act (CAFRA) that now applies to all federal forfeiture actions. In addition, all remaining states that previously did not have an innocent owner defense, including Michigan, eventually passed legislation barring the forfeiture of property belonging to an innocent owner.

However, in most states and at the federal level, the burden is on the owner to establish her innocence, which would then exempt the property from forfeiture. This is the exact opposite of the dictum “innocent until proven guilty” that applies in criminal cases.

As Table 3 shows, only in six states does the government bear the burden of establishing that an owner is not innocent for forfeiture of all kinds of property. In another six states, the burden depends on the property in question. Typically, in these states, the burden is on the government for real property, especially primary residences, while it is on the owner for other property such as cash. In 38 states, the burden is on the owner to establish his innocence.

#### Federal Equitable Sharing

Despite legal environments in most states that favor law enforcement over property owners in forfeiture proceedings, state and local agencies often—and increasingly—turn to a lesser known asset forfeiture practice called “equitable sharing.”

The Comprehensive Crime Control Act of 1984 allows state and local law enforcement agencies to transfer assets they seize to federal law enforcement agencies. Federal law enforcement officials can take possession of this property and initiate federal forfeiture actions as long as the “conduct giving rise to the seizure is in violation of federal law and where federal law provides for forfeiture.”[55]

Table 3: Innocent Owner Burden

Owner must prove innocence	Alaska, Arizona, Arkansas, Connecticut, Delaware, Georgia, Hawaii, Idaho, Illinois, Iowa, Louisiana, Maryland, Massachusetts, Minnesota, Mississippi, Missouri, Montana, Nebraska, Nevada, New Hampshire, New Jersey, New York, North Carolina, North Dakota, Ohio, Oklahoma, Pennsylvania, Rhode Island, South Carolina, South Dakota, Tennessee, Texas, Vermont, Virginia, Washington, West Virginia, Wisconsin, Wyoming
Depends on property	Alabama, Indiana, Kentucky, Maine, New Mexico, Utah
Government must prove guilt	California, Colorado, Florida, Kansas, Michigan, Oregon

Seized assets transferred to the federal government through equitable sharing agreements may be forfeited regardless of whether an individual is charged, let alone convicted, of a crime in either state or federal courts. If the assets are successfully forfeited to the federal government, the funds are deposited in the appropriate federal asset forfeiture fund, and state and local agencies receive a percentage back.[56]

There are two forms of equitable sharing activities. “Joint investigative” forfeitures are the result of investigative activities involving the cooperation of

federal and state or local law enforcement agencies. These are particularly common with drug and gang task forces involving federal, state and local law enforcement agencies. The percentage of funds shared with state and local agencies depends on their role and effort in a particular seizure.

"Adoptive forfeitures" occur when state and local agencies seize assets as the result of their investigation of state crimes. If the original crime is also a federal crime, the property is forfeitable under federal law. State and local agencies may then transfer seized property to federal law enforcement agencies, which can elect to "adopt" this property for federal forfeiture proceedings. State and local agencies receive 80 percent of the assets obtained from adoptive forfeitures, and the federal government retains the remaining 20 percent to offset costs associated with federal fund operations.

The rationale for joint forfeitures is that the federal government can serve as the sole processor of potentially complicated seizure and forfeiture activities. Furthermore, for geographic areas that may involve a multi-state task force, the federal forfeiture laws can avoid conflicts between statutes affecting different state and local agencies, creating a more equitable return on agency participation.

Adoptive forfeitures are more controversial and have been the subject of considerable scholarly criticism.<sup>[57]</sup> Government officials<sup>[58]</sup> and proponents of adoptive forfeitures<sup>[59]</sup> frequently cite improved inter-agency coordination and cooperation, more efficient forfeiture processing and tougher federal criminal penalties for many crimes (especially drug crimes).

Critics note that these are rather superficial rationales.<sup>[60]</sup> The most reasonable explanation is that it is in the financial interests of many state and local agencies to process forfeitures through the federal government rather than to use their own existing state legal framework.

There are several reasons why state and local agencies would elect to use equitable sharing. First, when state and local agencies transfer seized property to the federal government for forfeiture, that property is subject to the federal government standard—preponderance of the evidence—not the state standard, even if state law is more restrictive. Thus, it is easier for the federal government to prevail in forfeiture actions than some states.

Second, in those states where law enforcement does not receive all of the proceeds from civil forfeiture, state law typically mandates that the proceeds be distributed to specific non-law enforcement purposes, such as education or general fund expenditures. However, state and local agencies can enter into agreements with federal agencies to coordinate and enhance forfeiture activities, and the funds obtained are generally exempt from these restrictions.

Furthermore, the federal government *requires* that any funds distributed through equitable sharing arrangements be used solely to fund law enforcement activities, even for agencies in states where law enforcement receives *none* of the proceeds from state forfeitures.<sup>[61]</sup> The federal government will discontinue equitable sharing agreements with an agency if it is discovered that funds are being used for non-law enforcement purposes—even if state law requires such use.

Moreover, in an effort to encourage the creation of independent task forces designed to target particular crimes such as drug sales and trafficking, equitable sharing payments may be used to pay the salary of officer positions created to replace officers assigned full-time to task forces—even in states that prohibit using forfeiture funds to pay officer salaries.<sup>[62]</sup>

In these ways, the federal government's asset forfeiture program helps state and local agencies avoid restrictions in state law that increase the effort necessary to forfeit funds or diminish the incentives for such activities in the first place.<sup>[63]</sup>

It is difficult to ignore the substantial difference in the return on investment for many law enforcement agencies to engage in equitable sharing activities compared with state forfeiture actions. Vecchi and Sigler claim that the direct payment of forfeiture funds by the federal government to federal, state and local agencies represents "a virtual cash cow" for these agencies.<sup>[64]</sup>

Even advocates of forfeiture activities acknowledge the circumvention of state forfeiture laws that equitable sharing enables. For example, California prosecutor Dee R. Edgeworth notes that while some states have homestead exemptions that preclude the forfeiture of real property that qualifies as a homestead, a state homestead exemption is not a defense to a federal real property forfeiture case because the federal supremacy clause preempts the state exemption.... Therefore, in jurisdictions with state homestead exemptions, law enforcement will use the federal forfeiture system for any real property that may be exempted under state law.<sup>[65]</sup>

Edgeworth cites the U.S. Department of Justice policy manual for asset forfeiture as discouraging adoptive forfeitures simply to avoid more burdensome state laws.<sup>[66]</sup> The actual language in the policy manual, however, seemingly *encourages* such actions. According to the "Request for Adoption of State or Local Seizures" form,

As a general rule, if a state or local agency has seized property as part of ongoing state criminal investigation, and if the criminal defendants are being prosecuted in state court, the forfeiture action should also be pursued in state court. However, certain circumstances may make federal forfeiture appropriate. These circumstances include, but are not limited to, the following: (1) *state laws or procedures are inadequate or forfeiture experience is lacking in the state system with the result that a state forfeiture action may be unfeasible or unsuccessful* (emphasis added).<sup>[67]</sup>

The emphasized passage indicates that adoptive forfeitures are acceptable in cases in which state and local law enforcement is uncertain they would prevail under state law. The language also suggests that federal adoptive forfeitures could be pursued even if the owner is being prosecuted in state court. Because the state would have to meet a beyond a reasonable doubt standard in criminal court, the only rationales for adoptive forfeiture in such cases would seem to be concerns about insufficient evidence to convict or, in the event the state prevails, the fact that existing state law allocates less than the 80 percent proceeds granted under federal law. It is unclear how this language supposedly reduces attempts to circumvent state laws.<sup>[68]</sup>

In one of the few empirical analyses of asset forfeiture to date, criminologists John Worrall and Tomislav Kovandzic found that law enforcement agencies in states where at least a portion of forfeiture proceeds must be used for non-law enforcement purposes had significantly higher levels of equitable sharing payments than agencies in states where law enforcement could keep all proceeds.<sup>[69]</sup> The results suggest that law enforcement agencies in states that require law enforcement to share forfeiture proceeds are more likely to engage in equitable sharing in order to avoid state restrictions.

This is consistent with investigative reports such as the 2008 NPR series<sup>[70]</sup> and scholarly research<sup>[71]</sup> that highlight law enforcement efforts to maximize revenue through equitable sharing. For example, following the passage of a Missouri law requiring all forfeiture proceeds to be deposited in the state education fund, law enforcement agencies took specific steps to circumvent this law by increasing the use of equitable sharing.<sup>[72]</sup> This is also consistent with the findings of our own original analysis of equitable sharing data.

Forfeiture critics argue that the self-funding nature of asset forfeiture, especially equitable sharing proceeds that are not subject to restrictions of state law, poses real danger to the public's ability to oversee government resources, as state legislatures have less power to set law enforcement budgets.<sup>[73]</sup> Many departments collect more in forfeiture revenues than their yearly operating budget, but they see no accompanying reductions because state laws frequently prohibit reducing law enforcement budgets as a result of new forfeiture revenues.<sup>[74]</sup>

#### The Extent and Nature of Asset Forfeiture in the United States

### Data Sources

To measure the extent of asset forfeiture use, we relied on three sources of data. Alone, none provide a complete picture of asset forfeiture in the United States, but together they paint a clearer portrait. Although they all have limitations, these sources represent the best-available data on asset forfeiture. Part II of this report provides the same data for each state.

All of these data sources include both civil and criminal forfeitures—none report them separately—though given that 80 percent of federal forfeitures occur absent prosecution, it is likely that the vast majority are civil asset forfeitures.

- Freedom of Information Requests**—Laws in 29 states clearly required data on asset forfeiture use to be collected. The Institute for Justice spent two years submitting official freedom of information requests to those states. Only 19 states provided reliably useful information, and as shown in Part II, the extent of information and level of detail varies widely. Two states responded with unusable data, and eight simply failed to respond. Thus, in most states, we know very little about the use of asset forfeiture. It is important to note that some states may have included equitable sharing proceeds, as well as proceeds from state-law forfeitures, in their reports. So these data may overlap with reported equitable sharing receipts.
- LEMAS**—The Law Enforcement Management and Administrative Statistics (LEMAS) survey of law enforcement agencies nationwide is conducted every three to four years by the Census Bureau on behalf of the Bureau of Justice Statistics at the U.S. Department of Justice.[75] One question on the survey asks agencies to report the total amount of forfeiture proceeds received during the previous calendar year as the result of participation in a drug asset forfeiture program.[76] Thus, LEMAS forfeiture totals are based exclusively on forfeitures associated with drug offenses and likely only include funds received by law enforcement (excluding assets distributed to other non-agency funds), thereby undercounting the total amount of forfeitures.[77] LEMAS data likely include, at least for some agencies, both proceeds of forfeitures conducted under state law and those conducted via equitable sharing.
- Federal Asset Forfeiture Fund Reports**—Several federal documents report annual information on the operation of the federal Department of Justice's Assets Forfeiture Fund (AFF) and the Treasury Forfeiture Fund (TFF) of the U.S. Department of the Treasury. Federal forfeiture funds are the depository for all federally forfeited assets—regardless of whether they were initially seized by state and local agents and then accepted for federal equitable sharing or the exclusive result of federal agents. The sums of assets in these funds thus represent a wide-reaching picture of asset forfeiture in the United States.[78]

### Findings

Overall, these data begin to show that state and local agencies, as well as the federal government, use asset forfeiture extensively—often to the tune of tens of millions of dollars each year. As Table 4 shows, in just nine states, forfeited currency totaled more than \$70 million in just a two-year period, from 2001 to 2002. This is the two-year period for which the most states reported, in response to freedom of information requests, the total amount of currency forfeited by law enforcement. These do not include the additional proceeds from the sale of property and vehicles, so the extent of forfeiture is underrepresented by this number.

Table 4 Forfeited Currency in Nine States, 2001 and 2002

	2001	2002	Total	Average per Year
Arkansas	\$1,494,483	\$2,805,948	\$4,300,431	\$3,150,316
Florida	\$450,945	\$645,537	\$1,096,482	\$648,241
Indiana	\$338,248	\$487,599	\$825,847	\$412,924
Massachusetts	\$5,235,308	\$4,153,936	\$9,409,244	\$4,704,622
Michigan	\$9,811,342	\$10,830,841	\$19,642,183	\$9,821,092
Minnesota	\$960,081	\$684,454	\$1,644,535	\$822,268
Texas	\$17,443,639	\$5,184,319	\$22,627,958	\$11,313,979
Virginia	\$3,792,846	\$3,828,463	\$7,581,309	\$3,790,655
Washington	\$705,084	\$680,645	\$1,385,729	\$692,865
Total	\$41,233,976	\$29,301,942	\$70,535,918	\$35,267,959
Average per State	\$4,579,331	\$3,255,771	\$7,835,102	\$3,917,551

Not surprisingly, the larger states in this list reported the greatest forfeiture totals, but even smaller states and those not commonly identified as having serious crime or drug problems report considerable asset forfeiture activity. For example, Massachusetts and Texas report similar currency forfeiture totals for 2002, which suggests that forfeiture activity is not correlated with population size or the extent of crime and drug problems in a given state.

Freedom of information data also reveal that states appear to be forfeiting a large number of vehicles, as Table 5 shows. Between 2001 and 2007, Texas and Virginia together forfeited more than 17,000 vehicles, and the revenues generated are likely substantial. For example, Virginia reported the value of vehicle forfeitures over a 12-year period as more than \$34 million. While many forfeited vehicles are either put into service or have limited resale value, the sale of only a fraction of forfeited vehicles would still provide considerable proceeds.

Table 5 Number and Value of Vehicles Forfeited in Five States

State	Number of Vehicles	Total Vehicle Value
1999	4	\$38,064
2000	4	\$17,660
2001	6	\$52,055
2002	7	\$55,903
2003	7	\$40,960
Total	28	\$191,804
1996	268	\$491,285
1997	391	\$2,141,597
1998	418	\$2,182,659
1999	409	\$1,918,664
2000	463	\$1,107,804
2001	521	\$2,630,333
2002	569	\$3,598,131
2003	617	\$3,323,353
2004	801	\$3,484,799
2005	837	\$4,492,297
2006	745	\$4,294,803
2007	772	\$4,391,787
Total	6,803	\$34,013,983
2001	305	NA
2002	269	NA
2003	1,575	NA
2004	3,171	NA
2005	1,767	NA
2006	1,996	NA

Forfeiture also appears extensive looking at LEMAS data, with more than \$1 billion in combined forfeiture proceeds reported for 2000 and 2003, the most recent years available. In 2000, LEMAS surveyed 2,985 agencies and reported a total of \$669,703,443 in forfeiture proceeds. In 2003, the 2,859 agencies surveyed reported \$536,944,811 in proceeds. [79] However, as noted earlier, it is likely that LEMAS undercounts the true extent of forfeiture use, both because it only addresses drug forfeitures and because it only asks for proceeds returned to law enforcement agencies. It is also not clear, because the survey question does not ask, whether these data cover currency only or

2007	2,069	NA
Totals	10,532	NA
2000	534	NA
2001	514	NA
2002	523	NA
2003	683	NA
2004	779	NA
2005	771	NA
2006	654	NA
2007	684	NA
2008	585	NA
Totals	5,751	NA
2001	NA	\$536,040
2002	NA	\$487,147
2003	NA	\$575,675
2004	NA	\$457,792
2005	NA	\$332,230
2006	NA	\$460,855
2007	NA	\$468,290
Totals	NA	\$3,218,027

other assets seized, such as cars, homes and boats.

Federal reports also indicate widespread—and growing—use of asset forfeiture by federal agents and through equitable sharing. As Table 6 shows, from 2006 to 2008, currency deposits alone to the Department of Justice's Assets Forfeiture Fund (AFF) exceeded \$1 billion each year, with tens or even hundreds of millions more in property forfeitures. Annual financial statements indicate that these years

had a few exceptionally high-value forfeitures (a single case of \$337 million, three fraud cases totaling \$842 million, and \$443 million from five major cases); however, even after deducting the assets from these exceptional cases, deposits for these years are higher than in previous years.

Moreover, in 2008, for the first time in its history, the AFF held more than \$1 billion in funds available for law enforcement activities. These are net assets (or "net position" in Department of Justice language)[80]—forfeiture proceeds available to law enforcement after debts owed by the Fund are paid. These debts include payments to third parties, equitable sharing payments, asset management expenses, special contracts associated with Fund operation and funds supporting joint law enforcement operations. In short, this is money that federal law enforcement can use.

Table 6 Deposits to Department of Justice Assets Forfeiture Fund, 2001 to 2008

	Cash and Cash Equivalents	Forfeitures of Property	Totals
FY 2001	\$357,900,000	\$18,900,000	\$376,800,000
FY 2002	\$355,600,000	\$68,000,000	\$423,600,000
FY 2003	\$413,900,000	\$72,100,000	\$486,000,000
FY 2004	\$448,500,000	\$94,600,000	\$543,100,000
FY 2005	\$514,900,000	\$80,600,000	\$595,500,000
FY 2006	\$1,009,200,000	\$115,700,000	\$1,124,900,000
FY 2007	\$1,409,000,000	\$106,700,000	\$1,515,700,000
FY 2008	\$1,222,600,000	\$63,400,000	\$1,286,000,000
Totals	\$5,731,600,000	\$650,000,000	\$6,381,600,000
Averages	\$716,450,000	\$81,250,000	\$797,700,000

Table 7 reports the growth of net assets in both the AFF and the TFF in fiscal years 2000 to 2008. Although the AFF has considerably more revenues, the TFF has also increased substantially, with more than \$400 million in net assets in 2008 alone.

Consider that in 1986, the second year after the AFF was created and amendments to federal forfeiture law allowed law enforcement agencies greater latitude to retain and spend forfeiture proceeds, the Fund received deposits of \$93.7 million from forfeited cash and the sale of forfeited property.[81] By 2008, the Fund held more than \$1 billion in net assets.

This \$1 billion in net assets would cover all or almost all of the total justice system expenditures (including police, judicial and corrections combined) in 2006 for Utah (\$1.2 billion), New Mexico (\$1.2 billion), Mississippi (\$1.1 billion), Kansas (\$1.3 billion), Iowa (\$1.2 billion) or Arkansas (\$1.2 billion).[82]

In addition, both the AFF and TFF may invest a portion of their assets in U.S. Treasury securities and retain the interest income for future operations. During fiscal years 2000 to 2008, the time period covered in Table 7, the range of investment income was \$11.5 million to a staggering \$111 million in 2007. Thus, considerable sums of money are generated by the investment of forfeiture assets, which are then used to strengthen the Department of Justice's and Treasury Department's ability to forfeit more assets.

Table 7 Departments of Justice and Treasury Forfeiture Funds Net Assets, 2000 to 2008

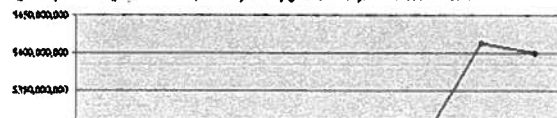
	AFF Net Assets	TFF Net Assets	Totals
FY 2000	\$336,500,000	NA	NA
FY 2001	\$525,800,000	\$237,500,000	\$763,300,000
FY 2002	\$485,200,000	\$173,000,000	\$658,200,000
FY 2003	\$528,400,000	\$177,200,000	\$705,600,000
FY 2004	\$627,900,000	\$194,100,000	\$822,000,000
FY 2005	\$448,000,000	\$355,300,000	\$803,300,000
FY 2006	\$651,100,000	\$236,800,000	\$887,900,000
FY 2007	\$734,300,000	\$361,400,000	\$1,095,600,000
FY 2008	\$1,000,700,000	\$426,800,000	\$1,427,500,000

Just as federal asset forfeiture funds have grown, so too have equitable sharing payments from the AFF to state and local agencies and task forces—essentially doubling from 2000 to 2008, from a little more than \$200 million to \$400 million, as shown in Figure 1. The nine-year total comes to more than \$2.4 billion, and the amount of money that has returned to state and local law enforcement has increased significantly over the past three years. There can be little doubt that a considerable amount of the asset forfeiture that occurs in the United States is the result of equitable sharing.

State freedom of information data also show an increase in forfeiture use, although there are yearly fluctuations. Table 8 shows the growth of currency forfeitures in four states over the six-year period of 2001 to 2006. (Only four states provided these data for these years.) In particular, Texas

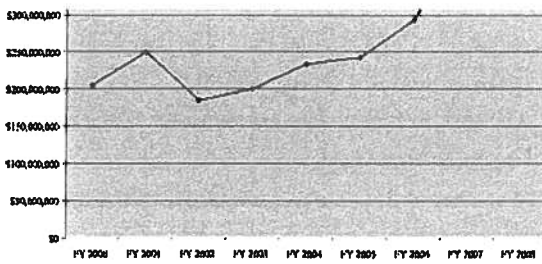
experienced tremendous increases after 2002. During this six-year period, law enforcement agencies in these four states alone reported currency forfeitures of more than \$226 million.

Figure 1 Equitable Sharing Payments to States from the Department of Justice Assets Forfeiture Fund, 2000 to 2008



The growth in forfeitures also holds true for vehicles, as shown in Table 5. The number of vehicles forfeited in the larger states, Virginia and Texas, increased nearly threefold from 1996 to 2007 and from 2001 to 2007, respectively.[83]

In short, the best available data on asset



argument from forfeiture advocates. Advocates continually highlight how forfeiture is used to pursue high-level targets and major criminal organizations.[86] Table 9 suggests that, at least at the state level, this is not necessarily the case. One-half of all Virginia currency forfeitures were for less than \$614 to \$1,288, depending on the year under examination.

Table 8: Currency Forfeitures in Four States, 2001 to 2006

	Oldham	Texas	Virginia	Washington	Total	Average
2001	\$5,934,341	\$17,443,639	\$3,752,846	\$705,044	\$25,828,110	\$6,457,028
2002	\$6,320,748	\$5,184,519	\$3,828,463	\$480,645	\$16,214,375	\$4,053,594
2003	\$5,887,904	\$40,003,048	\$5,467,848	\$788,400	\$52,344,200	\$13,086,050
2004	\$5,236,443	\$55,976,382	\$6,754,733	\$834,390	\$68,791,947	\$17,197,987
2005	\$5,378,121	\$25,308,679	\$6,698,992	\$1,229,815	\$38,715,729	\$9,678,932
2006	\$5,648,349	\$35,043,289	\$5,180,497	\$864,404	\$46,737,141	\$11,684,286
Total	\$32,508,308	\$186,879,374	\$31,643,376	\$5,392,680	\$236,452,132	\$54,863,031
Average	\$5,432,718	\$26,163,263	\$5,280,563	\$898,810	\$37,773,154	\$9,443,838

forfeiture in the United States indicates that its use is extensive at all levels of government and suggests that it is growing. Contrast this finding with rates of drug usage and arrest, the most common application of civil forfeiture laws. The percentage of youths and adults who admit to use of various illegal substances sharply declined in the early 1980s and has remained relatively stable since then,[84] while drug arrests have continued to rise.[85] Thus, despite relatively stable rates of drug usage, police have increased arrests—and appear to be profiting considerably from those activities.

Available data also appear to contradict a key argument from forfeiture advocates. Advocates continually highlight how forfeiture is used to pursue high-level targets and major criminal organizations.[86] Table 9 suggests that, at least at the state level, this is not necessarily the case. One-half of all Virginia currency forfeitures were for less than \$614 to \$1,288, depending on the year under examination.

Thus, rather than high-level targets and criminal organizations, state and local law enforcement frequently seize and forfeit relatively small amounts of currency that would more likely be held by low-level offenders or ordinary individuals.

Similarly, as shown in Table 5, the average value of vehicles forfeited appears to be low, typically less than \$6,000. And given that this average presumably includes some expensive vehicles, it is likely that the median (which is unavailable) is considerably less than \$6,000. Again, this seemingly contradicts proponents' claims[87] that forfeitures target expensive "toys" (such as

vehicles) that criminals purchase with the proceeds from their "ill-gotten gains."

### Is Law Enforcement Policing for Profit?

Available data indicate that forfeiture use is widespread and growing—but are law enforcement agencies "policing for profit"? Do laws that make forfeiture more rewarding and easier for law enforcement lead to greater use of forfeiture?

To find out, we tested the hypothesis that stricter state forfeiture laws, coupled with smaller allocations of proceeds to law enforcement, lead to less use of forfeiture under state law by examining federal equitable sharing data. Equitable sharing provides a way for state and local law enforcement agencies to circumvent unfavorable state forfeiture procedures, so we would expect to see greater use of equitable sharing in states where law enforcement keeps less and faces greater procedural burdens.

This is, in fact, precisely what we found. The results suggest, albeit indirectly, that when state law makes forfeiture less rewarding and more difficult, state and local law enforcement agencies engage in less of it.

Ideally, we would also test the relationship between state forfeiture laws and proceeds from forfeitures conducted under state law. Unfortunately, because state record-keeping on forfeiture is limited, there is no sufficient source of data on

Table 9: Frequency of Currency Forfeiture Actions, Maine and Virginia

	Number forfeitures	Average value per forfeiture	Median value
<b>Maine</b>			
1999	80	\$12,782	\$2,630
2000	44	\$8,308	\$3,231
2001	69	\$49,012	\$1,800
2002	68	\$7,171	\$2,470
2003	70	\$4,738	\$2,230
<b>Maine Total</b>	331		
<b>Virginia</b>			
1996	1,098	\$2,373	\$707
1997	1,184	\$1,893	\$702
1998	1,332	\$2,253	\$645
1999	1,492	\$2,090	\$628
2000	1,623	\$2,192	\$628
2001	1,695	\$2,217	\$685
2002	1,848	\$2,073	\$631
2003	2,160	\$2,531	\$615
2004	2,456	\$2,750	\$660
2005	1,723	\$3,888	\$700
2006	1,556	\$5,329	\$1,235
2007	1,589	\$4,104	\$1,289
<b>Va. Total</b>	19,854		

state-law forfeitures for such an analysis.

One possibility is the data received through freedom of information requests. But these data represent less than half of the states, span different years and cover different levels and types of law enforcement agencies from state to state. The result is that the sample is simply too small, and the quality of the data too spotty, to be able to come to any solid conclusions.

Another possibility is LEMAS data, which provide consistent coverage between states and include all states. However, LEMAS does not distinguish between state-level and equitable sharing receipts. Therefore, we cannot be certain whether an analysis would measure the relationship between state forfeiture laws and state forfeiture proceeds, equitable sharing



proceeds, or both. The reliability of any relationship we would find would be highly suspect.[88]

### Analysis

The analysis of equitable sharing and its relationship to state laws relied on a sample of 563 law enforcement agencies. The measure of equitable sharing reflected payments of cash and sale proceeds returned to state and local law enforcement agencies through the Department of Justice's Asset Forfeiture Program. Because any one year may be atypical and thus skew results, we averaged equitable sharing payments received by agencies for fiscal years 2000 to 2004. Finally, we divided this five-year average by the size of the resident population served by the agency to arrive at a per capita measure of equitable sharing payments.[89] The use of a per capita measure controls for population differences and minimizes concerns that our results are dominated by larger agencies that can be expected to encounter more drug-related activity simply because they serve a larger population.

Differences in equitable sharing payments were then compared to three measures of state forfeiture laws:[90] the standard of proof required; whether the innocent owner burden is on the owner, government, or whether it depends on the property; and the profit motive (the percentage of forfeited assets agencies receive).[91]

We also controlled for various factors that could muddy the relationship between equitable sharing proceeds and state laws: the number of full-time officers assigned to special or multi-agency drug enforcement units, the arrest rate (per 100,000 population) for drug manufacturing and selling, the violent crime rate (per 100,000 population), law enforcement agency type, whether the agency was primarily responsible for enforcing drug laws in their respective jurisdiction, and region of the country. For a more detailed description of our methods, see Appendix A.

### Results

The findings from the equitable sharing analysis are unequivocal: Agencies in states that limit the ability to profit from forfeiture proceeds receive significantly more equitable sharing proceeds. This suggests that law enforcement agencies are circumventing restrictive state laws.

Results indicate law enforcement agencies in generous forfeiture states receive significantly lower equitable sharing payments from the Department of Justice. For example, each 25 percentage point decrease in the state profit motive (say, from 100 percent to 75 percent) boosts federal equitable sharing by \$7,500 per year. This is for a law enforcement agency serving an average-sized population of 300,000. Thus, as Table 10 shows, law enforcement agencies in states with no profit motive will receive, on average, four times that amount—\$30,000—compared to agencies in states where 100 percent of proceeds go to law enforcement.

Table 10: Boost to Equitable Sharing Payments from State Law

	Dollar Increase (Average-sized Law Enforcement Agency)	Average Percentage Increase
Profit Motive (100 percentage point decrease)	\$30,000*	25 percent
Innocent Owner Burden (on government)	\$27,600*	23 percent
Standard of Proof (higher by one level)	\$16,860* (in presumed innocent states only)	14 percent

\* significant at .10 level; \*\* significant at .01 level.

Put another way, 26 states permit law enforcement to use all civil forfeiture proceeds. If these states were to do away with the profit motive, they could expect law enforcement to turn more to equitable sharing, with the average-sized agency taking in \$30,000 more in equitable sharing proceeds. The average-sized law enforcement agency receives about \$120,000 in equitable sharing payments already, so an additional \$30,000 would represent a 25 percent increase, on average.

Similarly, results suggest that, in states where innocent owner statutes place a greater burden

on the state, agencies skirt this procedural safeguard by engaging in more equitable sharing, which relies on the less burdensome federal standard for the government. Switching the burden of proof in innocent owner defenses from the property owner to the government increases expected equitable sharing payments by \$27,600 per year for an average-sized agency, or an increase of about 23 percent in equitable sharing receipts.

By itself, results on the standard of proof alone were not statistically significant. However, the combination of placing the burden on the government to establish a property owner's guilt and raising the standard of proof leads to a statistically significant increase in equitable sharing payments. Specifically, in states where owners are presumed innocent, raising the standard of proof one level boosts equitable sharing receipts by \$16,860 per year for an average-sized agency, an increase of about 14 percent. The effect of increasing the standard of proof was not statistically significant in presumed guilty states.

Turning to the combination of innocent owner burden and profit motive, when the innocent owner burden switches from the owner to the government, we find that the effects of changes in the profit motive are even more pronounced.

If the owner is presumed guilty and must prove his innocence, as in 38 states for all property and another six for some property, forfeiture is easier for the government. In those states, as shown in Table 11, a 25 percent increase in the profit motive under state law is associated with a decrease in equitable sharing payments of about \$9,750 per year for an average-sized law enforcement agency. This is a larger effect than we found when analyzing profit motive alone (a decrease in equitable sharing payments of \$7,500 for each 25 percent increase in the profit motive). Raising the profit motive in state law means that agencies will turn to equitable sharing less, even more so in presumed guilty states where

Table 11: Impact of Profit Motive in Presumed Guilty and Presumed Innocent States

	Change in Equitable Sharing Payments (Average-sized Law Enforcement Agency)
Presumed Guilty States	Decreases \$9,750 with each 25 percentage point increase in profit motive.**
Presumed Innocent States	Increases, regardless of size of profit motive.*

\* significant at .10 level; \*\* significant at .01 level

forfeiture is already relatively easy under state law.

However, when the owner is presumed innocent and the state must prove guilt, as in only six states, law enforcement agencies will participate more often in equitable sharing, no matter the percentage they are allowed to keep in state seizures. Thus, it appears that presumed innocent laws make state forfeiture procedures so onerous for law enforcement that they more frequently turn to federal equitable sharing, regardless of the profit motive in state law.

In short, all of these results demonstrate that all three factors of state forfeiture law that we studied—profit motive, innocent owner burden and standard of proof—impact whether law enforcement agencies choose to pursue equitable sharing. Moreover, when state laws make forfeiture more difficult and less rewarding, agencies are apt to turn to the federal government's easier and more generous forfeiture procedures.

Importantly, all of these findings held true—and indeed, became stronger—even after controlling for the variables noted above, such as drug arrests and violent crime rates. Put another way, the number of drug arrests or violent crimes in an area or the size or mission (drug-related or not) of a law enforcement agency does not “explain away” the effects of hurdles to forfeiture in state law. Even comparing similar agencies in similar crime-rate areas, the agencies in states with more restrictive and less generous state laws will use equitable sharing more.

In all, these results provide compelling evidence that law enforcement agencies respond to incentives in state law—specifically by using equitable sharing more when that method of forfeiture is more likely to turn a profit than state-law procedures. This also suggests, though indirectly, that states that make forfeiture more difficult and less rewarding see less forfeiture under state law. Altogether, the results make clear that forfeiture laws that give law enforcement agencies a share of forfeiture proceeds create a dynamic of “policing for profit.”

[17] The U.S. Department of Justice defines *forfeiture* as “the taking of property derived from a crime, involved in a crime, or that which makes a crime easier to commit or detect without compensating the owner,” although, as discussed in this report, the degree of certainty required to demonstrate an association with criminal conduct varies and is a matter of some controversy, United States Department of Justice. (2009). *Guide to equitable sharing for state and local law enforcement agencies*. Washington, D.C., p. 8.

[18] Cassella, S. (2007). Overview of asset forfeiture law in the United States. *United States Attorneys’ Bulletin*, 55, 8-21, emphasis in original, p.14.

[19] Edgeworth, D. (2008). *Asset forfeiture: Practice and procedure in state and federal courts*. Chicago: American Bar Association; Williams, M. (2002). Civil asset forfeiture: Where does the money go? *Criminal Justice Review*, 27, 321-329.

[20] The U.S. Department of Justice indicates that the primary mission of its Asset Forfeiture Program is “to prevent and reduce crime by disrupting, damaging, and dismantling criminal organizations through the use of the forfeiture sanction. This is accomplished by means of depriving drug traffickers, racketeers, and other criminal syndicates of their ill-gotten proceeds and instrumentalities of their trade,” United States Department of Justice. (2008b). *Asset forfeiture fund and seized asset deposit fund annual financial statement: Fiscal Year 2007*. Washington, DC, p. 3. Another forfeiture proponent maintains that asset forfeiture allows the government to be more effective in prosecuting major offenders and removing their sources of income; Williams, H. (2002a). *Asset forfeiture: A law enforcement perspective*. Springfield, IL: Charles C. Thomas.

[21] Cassella, 2007; Edgeworth, 2008; United States Department of Justice, 2008b. In recent years, the federal government has prevailed in several major financial criminal cases that resulted in forfeitures totaling over \$1 billion (U.S. Department of Justice, 2008b). These funds were used to return millions of dollars to victims of these crimes. Despite this, few would argue that asset forfeiture, especially the seizure activities of state and local law enforcement, has been most commonly associated with government efforts in the war on drugs (Benson, B., Rasmussen, D., & Sollars, D. (1995). Police bureaucracies, their incentives, and the war on drugs. *Public Choice*, 83, 21-45; Blumenson, E. & Nilsen, E. (1998). Policing for profit: The drug war’s hidden economic agenda. *University of Chicago Law Review*, 65, 35-114; Edgeworth, 2008; Hadaway, B. (2000). Executive privateers: A discussion on why the Civil Asset Forfeiture Reform Act will not significantly reform the practice of forfeiture. *University of Miami Law Review*, 55, 81-121). Since drug offenders are easily replaceable, just removing the offender without also removing the proceeds from their activities arguably does little to stop the drug trade. The threat of losing property associated with criminal activity purportedly increases the deterrent value of enforcement and prosecutorial efforts (see Vecchi, G. & Sigler, R. (2001). *Assets forfeiture: A study of policy and its practice*. Durham, NC: Carolina Academic Press). Cassella (2007) argues that, “Taking the criminals’ toys away... not only ensures that the criminal enterprise is deprived of its economic resources and makes funds available for restitution to the victims, but it also sends a signal to the community that the benefits of a life of crime are illusory and temporary at best” (pp. 8-9).

[22] H. Williams, 2002; Cassella, 2007; Edgeworth, 2008.

[23] Edgeworth (2008) notes that law enforcement funds can be expended in six general areas: personnel costs (e.g., for community-oriented policing activities and overtime associated with drug enforcement activities), equipment, matching federal grants such as to pay officer salaries assigned to task forces, informant fees, buy money for drug operations, and other activities such as training, educational expenses, and drug education programs. The U.S. Department of Justice (2009) identifies a number of permissible uses for equitably shared assets, including operating costs associated with criminal investigations, training, equipment, travel and transportation costs associated with law enforcement duties, and accounting expenses associated with forfeiture activities.

[24] Benson et al., 1995; Blumenson and Nilsen, 1998; Duffy, M. (2001). Note: A drug war funded with drug money: The federal civil forfeiture statute and federalism. *Suffolk University Law Review*, 34, 511-540; Hadaway, 2000; Worrall, 2001; Worrall, J. (2004). The Civil Asset Forfeiture Reform Act of 2000: A sheep in wolf’s clothing? *Policing: An International Journal of Police Strategies and Management*, 27: 220-240.

[25] The method for distinguishing state asset forfeiture laws as reported in Tables 1-3 was based on the following research strategy. First, the authors reviewed the civil forfeiture asset statutes in each of the 50 states and coded each of these measures based on legal distinctions similar to those reported in Sorens, J., Muedini, F., & Ruger, W. (2008). State and local public policies in 2006: A new database. *State Politics and Policy Quarterly*, 8, 309-326. Next, several sources (most notably Edgeworth, 2008; Worrall, 2004, and Sorens et al., 2008) that reported similar information were compared for each measure for all states to minimize errors. Where conflicts arose between our determination and that of another source, we independently reviewed the existing state statutes and compared findings. There were very few differences between our coding and that reported in other sources. The differences that did exist were typically the result of either errors by previous researchers or their focus on a different aspect of forfeiture laws.

[26] For this table, any percentage of funds required to be allocated to prosecutors and district attorneys were included as “law enforcement.” Few states require a specific percentage of net proceeds to be allocated to prosecutors and, where present, are typically marginal (see Edgeworth, 2008, Table 10-1). Some states, however, require all forfeiture proceeds to be distributed by the district attorney associated with the seizing agency, and other states’ statutes are quite vague about the distinction between distributions to law enforcement and prosecutorial operations. Given the importance of cooperative relationships between police and prosecutors in forfeiture activities and the lack of distinction in many statutes, prosecution and district attorney allocations were included in law enforcement percentages. Examples of required allocations that were *not* counted as “law enforcement” include drug treatment programs, court expenses and drug education programs (e.g., D.A.R.E. programs). The latter was identified in many statutes as an activity that “may” be funded with forfeiture proceeds, but very few required a specific percentage of net proceeds to be allocated to such programs.

[27] All state and the federal forfeiture statutes provide for the initial deduction of certain costs and expenses from the gross proceeds of forfeited assets. The required expenses to be covered vary but may include property management costs, forfeiture processing expenses, reimbursement of third party interests and victim restitution. Given that all jurisdictions require initial costs to be deducted from gross forfeiture revenue, these may be best considered the percentage of net proceeds that are minimally allocated to law enforcement.

- [28] Benson et al., 1995; Blumenson and Nilsen, 1998; Worrall, 2001.
- [29] Benson et al., 1995; Burnett, J. (2008c). Deputy has Midas touch in asset seizures. *National Public Radio: Dirty money: Asset seizures and forfeitures*. Retrieved April 14, 2009 from [www.npr.org/templates/story/story.php?storyId=91582619](http://www.npr.org/templates/story/story.php?storyId=91582619); Vecchi and Sigler, 2001.
- [30] While forfeiture activities certainly vary across jurisdictions, it appears that many law enforcement agencies consider asset forfeiture to be an essential revenue stream (Burnett, J. (2008a). Seized drug assets pad police budgets. *National Public Radio: Dirty money: Asset seizures and forfeitures*. Retrieved April 14, 2009 from [www.npr.org/templates/story/story.php?storyId=91490480](http://www.npr.org/templates/story/story.php?storyId=91490480); Burnett, J. (2008b). Cash seizures by police prompt court fights. *National Public Radio: Dirty money: Asset seizures and forfeitures*. Retrieved April 14, 2009 from [www.npr.org/templates/story/story.php?storyId=91555835](http://www.npr.org/templates/story/story.php?storyId=91555835); Burnett, 2008c; Burnett, J. (2008d). Sheriff under scrutiny over drug money spending. *National Public Radio: Dirty money: Asset seizures and forfeitures*. Retrieved April 14, 2009 from [www.npr.org/templates/story/story.php?storyId=91638378](http://www.npr.org/templates/story/story.php?storyId=91638378); see also Worrall, 2001; Benson et al., 1995).
- [31] Burnett, 2008a-d.
- [32] Burnett, 2008d.
- [33] Vecchi and Sigler, 2001, p. 75.
- [34] Originally in Hyde, H. (1995). *Forfeiting our property rights*. Washington, D.C.: Cato Institute, quoted in Vecchi and Sigler, 2001, p. 75.
- [35] AssetRecoveryWatch.com (2009). Justice Department targets assets in all cases with "forfeiture potential." Retrieved from organization website at <http://assetforfeiturewatch.com>.
- [36] AssetRecoveryWatch.com promotes itself as "the indispensable source of news, information, and training for law enforcement professionals and others working in the asset forfeiture field." It is understandable that some lawyers would market themselves as specializing in assisting property owners to defeat forfeiture efforts. What may be unexpected is the cottage industry that has developed. In addition to AssetRecoveryWatch.com, the International Association for Asset Recovery (IAAR) claims its mission "is to enhance the capabilities and standards of professionals and agencies worldwide in the battle to win back assets that rightfully belong to governments, organizations or individuals victimized by criminal or wrongful conduct"; International Association for Asset Recovery (IAAR). (2009). Official website. Retrieved from <http://www.iaaronline.org/me2/default.asp>. Asset forfeiture appears to have become a revenue generator not only for law enforcement but also for independent contractors and organizations affiliated with such activities.
- [37] Worrall, 2001.
- [38] Miller, M. & Selva, L. (1994). Drug enforcement's double-edged sword: An assessment of asset forfeiture programs. *Justice Quarterly*, 11, 313-335.
- [39] Miller and Selva, 1994, p. 325.
- [40] Blumenson and Nilsen, 1998; Worrall, 2001.
- [41] Blumenson and Nilsen, 1998; Miller and Selva, 1995.
- [42] Blumenson and Nilsen, 1998; Benson et al., 1995; Miller and Selva, 1995.
- [43] Gaumer, C. (2007). A prosecutor's secret weapon: Federal civil forfeiture law. *United States Attorneys' Bulletin*, 55, 59-73, quote from p. 59.
- [44] The NDAA states that "law enforcement agencies and prosecutors should aggressively pursue forfeiture actions to eliminate the instrumentalities of crime and to confiscate the proceeds from criminal acts" (found in Edgeworth, 2008, p. 294).
- [45] Edgeworth, 2008.
- [46] Vecchi and Sigler, 2001.
- [47] Burnett, 2008a.
- [48] Blumenson and Nilsen, 1998; Hyde, 1995; Levy, 1996; Worrall, 2004.
- [49] Blumenson and Nilsen, 1998.
- [50] Blumenson and Nilsen, 1998.
- [51] Similarly, pressure from law enforcement interest groups watered down important provisions of the bill that eventually became the federal Civil Asset Forfeiture Reform Act (2000). In addition, the law enforcement lobby was able to add provisions that actually strengthened forfeiture powers in some circumstances (see Worrall, 2004; Edgeworth, 2008). Such efforts cannot be satisfactorily explained by altruistic concerns for the public good, since Congress and state legislators are presumably interested in the public good as well. Concerns about limits on their ability to self-generate revenue for operational, administrative and organizational expenses clearly play a role in law enforcement's continuing efforts to defeat reforms aimed at restricting forfeiture activities (Blumenson and Nilsen, 1998; Dunn, K. (n. d.). Reining in forfeiture: Common sense reform in the war on drugs. Retrieved August 12, 2009 from [www.pbs.org/wgbh/pages/frontline/shows/drugs/special/forfeiture.html](http://www.pbs.org/wgbh/pages/frontline/shows/drugs/special/forfeiture.html); Weiser, J. (2000). Commentary: Civil forfeiture laws are rife with abuse. Originally published in *Newsday of Long Island*, retrieved from <http://archive.southcoasttoday.com/daily/06-00/06-11-00/a10op041.htm>).
- [52] There are other legal protections, not addressed in this report, that make it easier for property owners to defend their property. Critics point out, however, that these are typically minimal and may be quite obscure and difficult for some owners to comprehend (Blumenson and Nilsen, 1998; Worrall, 2004). Furthermore, state and federal courts have consistently ruled that there is no constitutional right to counsel in forfeiture proceedings (Edgeworth, 2008). CAFRA provides for counsel in a very limited number of federal forfeiture circumstances, while Utah and New Mexico provide for indigent counsel in forfeiture cases more generally. Otherwise, individuals are typically required to provide for their own legal representation. The federal government and a few states award attorney fees in cases in which the property owner ultimately prevails. Even in these limited jurisdictions, critics note that some individuals are unwilling or unable to risk personal resources for attorney's fees (Burnett, 2008b; Worrall, 2004). Overcoming prosecutorial efforts and resources, bureaucratic red tape and insuring compliance with statutory requirements may be simply too much for many property owners.
- [53] See Benson et al., 1995; Blumenson and Nilsen, 1998.
- [54] *Bennis v. Michigan*, 516 U.S. 442 (1996).
- [55] United States Department of Justice, 2009, p. 6.
- [56] The Department of Justice Assets Forfeiture Fund accepts funds from the majority of federal law enforcement agencies, including the FBI, DEA and ATF. The Treasury Forfeiture Fund accepts deposits from Treasury agencies, such as the Secret Service, and financial and consumer agencies within the federal government.
- [57] Blumenson and Nilsen, 1998; Duffy, 2001; Hadaway, 2001; Levy, 1996; Worrall, 2004.
- [58] Cassella, 2007; United States Department of Justice, 2008b.
- [59] Edgeworth, 2008.

- [60] Blumenson and Nilsen, 1998; Levy, 1996.
- [61] United States Department of Justice, 2009.
- [62] Blumenson and Nilsen, 1998; Hadaway, 2001; United States Department of Justice, 2009.
- [63] Blumenson and Nilsen, 1998; Hadaway, 2001.
- [64] Vecchi and Sigler, 2001.
- [65] Edgeworth, 2008, p. 248; see also Duffy (2001) and von Kaenel, F. (1994). Recent development: Missouri ups the ante in the drug forfeiture 'race to the res.' *Washington University Law Quarterly*, 72, 1469-1486.
- [66] United States Department of Justice. (2008a). *Manual: Asset forfeiture policy manual*. Washington, D.C.
- [67] U.S. Department of Justice, 2008a, p. H-2.
- [68] A very limited number of states (see Edgeworth, 2008; von Kaenel, 1996) have statutory language that places seized property immediately under the jurisdiction of the local court. The result is that law enforcement cannot transfer this property until the court signs a turnover order releasing the property to the federal government. While this does not guarantee that courts will critically review such requests, it does represent an additional burden to state and local law enforcement for adoptive forfeitures in those jurisdictions. It appears that state and local law enforcement agencies, however, can avoid turnover requirements by engaging in joint investigative operations with agencies in different jurisdictions (federal or state) that would be the seizing agency of record. In such cases, state and local law enforcement agencies would receive a portion of forfeiture proceeds without being subject to state restrictions.
- [69] Worrall, J. & Kovandzic, T. (2008). Is policing for profit? Answers from asset forfeiture. *Criminology and Public Policy*, 7, 219-244.
- [70] Burnett, 2008a-d.
- [71] Blumenson and Nilsen, 1998; Vecchi and Sigler, 1994.
- [72] Dunn, n. d.; see also von Kaenel, 1994.
- [73] Blumenson and Nilsen, 1998; Duffy, 2001.
- [74] Blumenson and Nilsen, 1998; Burnett, 2008a-d.
- [75] LEMAS data are based on a sample that includes all state police agencies (i.e., state trooper or highway patrol) and local police agencies with 100 or more full-time sworn officers. In addition, a nationally representative sample of smaller police agencies is selected for participation. The 2003 LEMAS sample was mailed out to 3,154 agencies in December 2003. The sampling frame for the 2003 LEMAS survey was the 2000 census of state and local law enforcement agencies (CSLEA). Of the 3,154 agencies surveyed, 955 employed 100 or more sworn officers as of June 30, 2000. These 955 self-reporting (SR) agencies included 574 local police departments, 332 sheriffs' offices and 49 state law enforcement agencies. Self-reporting agencies in the LEMAS survey were defined as those agencies with 100 or more sworn full-time equivalent (FTE) employees and all state police agencies. The SR agencies were supplemented by a nationally representative stratified random sample of 2,199 non-self-reporting (NSR) agencies (1,539 local police departments and 660 sheriffs' offices) with less than 100 sworn personnel. The stratification variables used for the NSR agencies included the type of agency (local or sheriff), size of population served and number of sworn personnel. The overall response rate for the 2003 LEMAS survey was 90.6 percent ( $n=2,859$  agencies).
- [76] The actual question is, "Enter the total estimated value of money, goods, and property received by your agency from a drug asset forfeiture program during calendar year \_\_\_\_" (previous calendar year).
- [77] LEMAS data are publicly available from the National Archive of Criminal Justice Data at <http://www.icpsr.umich.edu/NACJD/lemas/>.
- [78] Federal seizures and state and local seizures accepted for equitable sharing by agencies participating in the Department of Justice forfeiture program are initially deposited into the Seized Asset Deposit Fund. These assets are not moved into the Assets Forfeiture Fund until they are declared forfeit and ownership transfers to the federal government. It appears that Treasury seizures are immediately deposited in the Treasury Forfeiture Fund. Unless otherwise noted, only forfeited assets are counted in the totals reported here.
- [79] These figures were determined from the LEMAS data using sample weights. The unweighted data indicate proceeds of \$564,363,864 in 2000 and \$414,573,647 in 2003.
- [80] U.S. Department of Justice, 2008, p. 7.
- [81] U.S. Department of Justice. (1997). Annual report of the Department of Justice asset forfeiture program: Fiscal years 1995 and 1996. Washington, D.C. This report refers to "net deposits," language not used in later Fund reports detailed in this study.
- [82] <http://www.ojp.usdoj.gov/bjs/eande.htm>.
- [83] By contrast, according to the LEMAS data reported for 2000 and 2003, forfeitures declined by \$133 million (using weighted data) in that three-year span. Part, but not all, of the decline may be accounted for by the fact that 126 fewer agencies responded to the 2003 LEMAS survey than in 2000. A more likely explanation is the impact of the federal CAFRA reform bill passed in 2000. The LEMAS survey asks for previous calendar-year figures, so data are essentially for the year prior to the survey—1999 and 2002. Government officials have acknowledged significant reductions in forfeitures between 2000 and 2002 and often attribute this to preemptive concerns about CAFRA limitations on forfeiture activities, as well as increasing attention to homeland security following the terrorist attacks of September 11, 2001 (Edgeworth, 2008; United States Department of Justice. (2002). *Asset forfeiture fund and seized asset deposit fund annual financial statement: Fiscal year 2002*. Washington, D.C.). There is a strong likelihood, if the trends in Table 8 are indicative, that LEMAS data after 2003 will show a sharp increase in forfeiture proceeds.
- [84] Walters, J. P. (2002, October 2002). Drug use trends. Retrieved October 28, 2009, from <http://www.whitehousedrugpolicy.gov/publications/factsht/druguse/drugusetrends.pdf>.
- [85] U.S. Census Bureau. (2009). *2009 Statistical Abstracts of the United States*. Washington, D.C. Specifically, the number of drug arrests has increased 39 percent between 2000 and 2005. This figure represents the increase in the number of suspects arrested for federal drug offenses and booked by the U.S. Marshals Service. According to *Statistical Abstracts*, "Persons suspected of violating Federal law may be arrested by any one of the many Federal agencies empowered to make arrests, or by State or local authorities. Regardless of which agency makes the arrest, Federal suspects are typically transferred to the custody of the U.S. Marshals Service for booking, processing and detention" (p. 198). As a result, this makes the 39 percent figure most relevant when discussing the amount of money in the federal assets forfeiture fund. However, if non-federal drug arrests are considered, the increase could be as much 96 percent between 1985 and 2006 (using figures from the 1987 and 2009 *Statistical Abstracts*). Finally, according to the 2009 *Statistical Abstracts*, total crime between 1985 and 2006 decreased by eight percent. See also, <http://www.ojp.usdoj.gov/bjs/glance/drug.htm>, for the increase in drug arrests from 1970 to 2007.
- [86] Cassella, 2007; Edgeworth, 2008; H. Williams, 2002.
- [87] Cassella (2007) argues, "[T]here is also the matter of the message that is sent to law abiding citizens when a notorious gangster or fraud artist is stripped of the trappings of what may have appeared to be an enviable lifestyle. Criminals typically spend their spoils on expensive homes, airplanes, electronic goods, and other 'toys' that everyone wants. Taking the criminals' toys away... not only ensures that the criminal enterprise is deprived of its economic resources and makes funds available for restitution to the victims, but it also sends a signal to the community that the benefits of a life of crime are illusory and temporary at best" (pp. 8-9).

[88] Another prohibitive issue in using the LEMAS data was the "self-referential" nature of one of the measures of the law in relation to the forfeiture proceeds as measured by LEMAS. Specifically, the LEMAS question that asks about forfeiture proceeds is likely interpreted to be asking for the amount received by the agency through a drug forfeiture program after an administrative or court process decides on the disposition of property—in other words, net forfeiture revenue rather than total assets seized in a given year. This means the relationship between the percentages measure and the forfeiture proceeds outcome used in this analysis would be perfectly correlated by default.

[89] Equitable sharing payments for fiscal years (ending September 30) 2000 to 2004 were obtained from audited reports overseen by the Office of the Inspector General and are available online at [usdoj.gov/jmd/afp/02fundreport/index.htm](http://usdoj.gov/jmd/afp/02fundreport/index.htm).

[90] In this analysis, states and their laws were coded consistent with Tables 1, 2 and 3, except for Oregon, Colorado and Utah. In each of these three states, forfeiture laws changed throughout the late-1990s and into the mid-2000s. For the analysis of equitable sharing, these states were coded consistent with the laws in effect during the time span covered in our analysis. Specifically, Colorado agencies received 100 percent of forfeiture, standard of proof was coded as preponderance of the evidence and the owner had to prove innocence. Oregon agencies received 92 percent of forfeiture, and standard of proof was prima facie. Finally, Utah agencies kept zero percent of forfeiture.

[91] In order to make interpretation of the statistical results easier and to minimize harmful collinearity problems between the three state forfeiture law variables in models including interaction terms, all three forfeiture law variables were centered. "Centering" means that a single value is subtracted from all of the data points. In our case, we subtracted, 50, four and two, from the forfeiture law variables measuring standard of proof required, innocent owner burden and profit motive, respectively. By centering the variables this way, the coefficients for the law variables have easy-to-understand interpretations—they are the partial effects for each law variable when evaluated at their medians (i.e., mid-point values). Centering the variables also makes interpretation of the interaction terms easier to understand.

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Institute for Justice  
901 N. Glebe Road, Suite 900  
Arlington, VA 22203  
Tel 703.682.9320, Fax 703.682.9321  
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